

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 744 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
SHAKTI KHANDSARI UDYOG

Versus

STATE OF GUJARAT

-----  
Appearance:

MR UDAY JOSHI for Petitioners

MR CC BHALJA for Respondents

-----  
CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/12/97

ORAL JUDGEMENT

Heard learned counsel for the parties.

2. The facts of this case, which are not in dispute are to be briefly stated. The petitioners, on 9.4.81 submitted an application to the competent authority for grant of permission for use of the agricultural land for non agricultural (N.A.) purpose. It appears that after submission of this application, the petitioners have

started raising construction of shed for factory. On 27.7.81, the competent authority granted N.A. permission. It is further case of petitioners, which is not disputed by respondents that the illegal construction which has been made on the land has also been ordered to be regularized on payment of penalty. Later on, on 28.8.81, the lay out plans for constructino of Khandsari factory were also sanctioned. It is also not in dispute that under the order dated 14th July 1982 of the competent authority, licence has been granted to the petitioners for manufacturing Khandsari with effect from April 1981. The respondent No.1 thereafter has given a show cause notice to the petitioners, in exercise of suo motu powers conferred under section 211 of the Bombay Land Revenue Code, 1879, (hereinafter referred to as 'Code') to show cause as to why the order dated 27th July 1981 should not be revised. Ultimately an order has been passed on 2.7.85 by respondent No.1 under which the order dated 27.7.81 of responsend No.2 has been revised and the N.A. permission grantd to the petitioners has been cancelled. Hence this Special Civil Application before this Court.

3. This Court has protected the petitioners by grant of interim relief. The learned counsel for respondents, on being asked by the Court, has fairly submitted that the only ground given by respondent No.1 for cancalletion of non agricultural permission granted in favour of petitioners is tht on the day on which the N.A. permission was granted by respondent No.2 in their favour, they were not having licence for manufacturing Khandsari, from the competent authority.

4. If we go by the facts of this case, though I find it to be correct that on 27th July 1981 the petitioners were not granted by the competent authority, a licence for manufacturing Khandsari, but it is also an admitted fact that on 14th July 1982, that licence has been granted in favour of petitioners for manufacturing Khandsari with effect from April 1981. So if we take this deemed date of grant of licence then it is not correct to say on the part of respondent No.1 that licence has not been granted. The respondent No.1, while exercising its powers under section 211 of the Code has altogether ignored an important fact that on the day on which Notice has been given to the petitioenrs for exercising of suo motu powers by it, the order granting licence for manufacturing Khandsari has been made in favour of petitioners. The respondent No.1 should have considered the matter objectively and it should nothave

gone into the matter for having subjective satisfaction taking a totally perverse approach in the matter.

5. Taking into consideration the totality of the facts of this case, the exercise of powers by respondent No.1 of suo motu revision under section 211 of the Code in the present case cannot be said to be fair and reasonable and as such that order of respondent no.1, impugned in this Special Civil Application, cannot be allowed to stand. In the result, this Special Civil Application succeeds and the same is allowed and the order annexure 'A' dated 2.7.85 of respondent No.1 is quashed and set aside. Rule made absolute with no order as to costs.

.....

(sunil)